

CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL AND  
SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES - MAY 16, 2001

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 5:30 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy  
Late: Council/Agency Member Chang (arrived at 6:17 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**WORKSHOP: BROWN ACT AND CONFLICT OF INTEREST**

City Attorney/Agency Counsel Leichter presented the City Council with a workshop on the Brown Act and Conflict of Interest. City Clerk/Agency Secretary Torrez addressed the Statement of Economic Interest (Form 700).

**ADJOURN**

Mayor/Chairman Kennedy adjourned the meeting at 6:25 p.m. for a dinner break.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:04 p.m.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Public Works staff member Jay Jaso led the Pledge of Allegiance.

**INTRODUCTIONS**

Director of Finance Dilles introduced Lisa Maier, *Accounting Assistant II*, and Chief of Police Schwab introduced *Police Officer* Shane Palsgrove, both recent hires of the City of Morgan Hill.

**PROCLAMATION**

Mayor Kennedy presented Public Works Staff Members Jay Jaso and Cary Keaton with a proclamation declaring May 20-May 26, 2001 as *National Public Works Week*.

Mr. Jaso and Mr. Keaton invited the City Council and the community to the City's celebration of Public Works Awareness Day where staff will express its pride, efficiency and effectiveness in carrying out the services that are associated with the Public Works Department. A hands on demonstrations and exhibits will be presented on Wednesday, May 23, 2001, 10:00 a.m. to 12:00 p.m. in the Civic Center area located between the Library and City Hall. A CIP presentation will be made in the Council Chambers.

## **PRESENTATION**

The presentation by the Executive Director of Mt. Madonna YMCA relating to *Senior Resource Day* was deferred.

Charlotte Powers, former San Jose City Council Member, made a presentation on the draft *Compact for a Sustainable Bay Area*. She indicated that this issue was initiated by a group of interested individuals who attended a conference in Washington, D.C. on Sustainable Development. These individuals put together a draft that City Councils throughout the county and County Board of Supervisors would have an opportunity to review and comment before a final document is prepared, noting that the final document will be made available for cities' to review. She indicated that the Sustainable Development draft is based on the principals of three "Es": 1) a prosperous *economy*; 2) social *equity*; and 3) a quality *environment*. She said that it was important for development to meet the needs of the present without compromising the ability of future generations from meeting their own needs. She noted that the draft Compact identifies key regional challenges and recommends ten strategic actions in order to meet these challenges. She felt that much is being done and recommended that cities try to reach a consensus with its neighbors around the world, focusing on the same strategic actions, resulting in a sustainable bay area.

## **CITY COUNCIL REPORT**

Mayor Kennedy reported on the following committees: 1) VTA Board of Directors - He indicated that there are several projects critical to South County such as the widening of Highway 101. He said that he spoke to Mike Evanhoe, VTA Director of Congestion Management Programs, Congestion Management Agency, and Highway Programs. He stated that on Monday evening, an interregional meeting was held in Gilroy addressing the much needed widening of Highway 101. The project is moving forward and is scheduled to start construction on July 2001. However, there are obstacles that have come up that need to be addressed. He felt that the Highway 101 project can be raised at the MTC meeting and that focus and pressure needs to be applied to MTC, Caltrans, and the U.S. Department of Fish and Wild Life. He said that there are some issues that have been raised at the last minute that could slow down the Highway 101 project and felt that everything should be done to make sure that it stays on schedule. 2) Energy crises/power shortage - He attended and participated in two energy summits sponsored by Mayor Ron Gonzalez, City of San Jose, Jim Bell, Santa Clara County Board of Supervisors, and Jim Woody from the Silicon Valley Manufacturing Group. He found these energy workshops/summits to be helpful. He has sponsored an initiative through the Santa Clara County Cities Association for an outreach program that would get the word out to all of the communities in Santa Clara County as to how critical the energy shortage will be this summer. Focus will be given to getting the message out to all residents that it is critical to conserve energy this summer as well as next summer. He stated that the regional conference held last Monday night is one of a series sponsored by Mayor Gonzalez and Mayor Perrine from the City

of Marina to focus on regional effects of Silicon Valley business development on housing and other issues of mutual interest (e.g., traffic, housing availability/affordability, etc.). He indicated that another meeting will be held in August in Hollister and the following meeting to be held in November in Morgan Hill. All the mayors throughout the four county regions will be invited to attended as well as supervisors from Santa Clara, Santa Cruz, San Bonito, and Monterey Counties.

### **CITY MANAGER'S REPORT**

City Manager Tewes reported that the City Council will be receiving a report on the annual city budget this evening. He thanked Finance staff and all departments who were involved in the budget preparation process. He indicated that tonight would launch a series of meetings involving the council and the opportunity for the community to comment. He stated that the budget includes a series of special analysis pages about important topics. He noted that one of the topics is energy consumption and its impact on the city's budget. In the special analysis, it is demonstrated how important electric costs are to the city's utility operations due to the topography of the community and the use of pumps and lift stations that consume a lot of energy. He reminded citizens that conserving water is one of the best ways to conserve electricity in Morgan Hill as it is the primary element of the budget where the community consumes electricity.

### **CITY ATTORNEY'S REPORT**

City Attorney Leichter stated that she did not have a City Attorney's report to present this evening.

### **PUBLIC COMMENTS**

Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Nancy Doumnour spoke in opposition to a proposed South County Criminal Justice Center. She stated that she has spoken to many citizens who are concerned about building a courthouse in Morgan Hill. She indicated that individuals have expressed the following concerns: 1) residents were not aware of a proposed courthouse; 2) the potential site of Butterfield and Diana Avenue is located in an area near the downtown within the Redevelopment Agency. Yet, documents such as Vision Morgan Hill and the General Plan have not mentioned the courthouse. She did not believe that the courthouse fits in with the vision of a small and friendly-family-oriented community. 3) It is being reported that 1,000 additional cars will be coming into the courthouse per day, noting that a traffic problem already exists in this area and other parts in Morgan Hill. 4) Safety concerns as criminals will be bused into Morgan Hill everyday. She did not believe that people want criminals who are out on probation coming into Morgan Hill, loitering in the downtown, parks and/or schools. 5) The city will be spending \$7 million of Redevelopment Agency money to pay the county to build a courthouse.

Jacqueline Courtes felt that it was important that the community be made aware of the proposed courthouse facility. She felt that the courthouse is a deceptive issue as the citizens voted for the Redevelopment Agency and the project was listed as a county services facility. In addition, the city recently mailed out beautiful, multi color fliers talking about general plan improvements with no mention of a courthouse. She felt that part of redevelopment is to eliminate blight. Currently, the

proposed site for the courthouse is an open field. She found shackled prisoners and barbed wire intake areas to be much more blighted than an empty field. She felt that the city faces other concerns regarding traffic and expanding Butterfield to six lanes to accommodate the traffic from the courthouse. The city should focus on allowing individuals to access the community center and schools safely versus allowing more individuals to come through town for the benefit of Gilroy and south San Jose residents who have a far higher crime rate than Morgan Hill. She felt that the courthouse has been a hidden issue. In looking at the City's ethics policy, it addresses honesty as an elected official. She felt that the elected officials need to be honest about what it is doing and that the Council needs to listen to what its constituents want in the City.

City Manager Tewes indicated that staff has conducted two community workshops and notified many individuals in the community about the opportunity to attend the workshops. Staff advised the individuals in attendance at the workshop that it would summarize their comments and bring them to the City Council as an agenda item at a City Council meeting. He indicated that staff would notify the speakers as to when this meeting will take place.

No other comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Sellers requested that items 2 and 3, Council Members Chang and Tate requested that item 8, and Council Member Carr requested that item 11 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **approved** Consent Calendar Items 1, 4-7, 9, 10, and 12-15 as follows:*

**1.        APRIL 2001 FINANCE AND INVESTMENT REPORT**

***Action:*** *Accepted and Filed Report.*

**4.        APPROVAL OF AMENDMENTS TO AGREEMENT WITH VTA TO RECEIVE MEASURE B, TEA 21 AND RABA FUNDS FOR PAVEMENT MAINTENANCE**

***Actions:*** *1) **Approved** Amendments to the Agreement with VTA to Receive Measure B, TEA 21 and RABA Funds; and 2) **Authorized** the City Manager to Execute the Amendments on Behalf of the City.*

**5.        ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9050, KENDAL HILL SUBDIVISION - Resolution No. 5474**

***Actions:*** *1) **Adopted** Resolution No. 5474, Accepting the Subdivision Improvements included in Tract 9050, Commonly Known as Kendal Hill; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.*

**6.        2000 ANNUAL CONSUMER CONFIDENCE REPORT REGARDING WATER QUALITY**

**Action: Informational Item Only.**

7. **APPROVE PURCHASE OF A PORTABLE 150 KW GENERATOR FOR WELL SITES AND BOOSTER STATIONS**  
**Action:** *Approved the Purchase of an Elliott Magnetek MD 150 QD (MTG41) Trailer (Magnetek TED 10000) Mounted Generator from Pac Machine Co., Inc.*
9. **APPROVAL OF AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH MH ENGINEERING FOR DESIGN OF BUTTERFIELD BOULEVARD EXTENSION FROM SAN PEDRO TO TENNANT**  
**Actions:** *1) Approved Supplemental Proposal; and 2) Authorized the City Manager to Execute an Amendment to the Professional Services Agreement with MH Engineering for Design of Butterfield Boulevard from Tennant Avenue to San Pedro Avenue, Increasing the Amount from \$101,660 to \$120,622.*
10. **DRAFT COMPACT FOR A SUSTAINABLE BAY AREA - Resolution No. 5475**  
**Action:** *Adopted Resolution No. 5475 Supporting Draft Compact.*
12. **ACCEPT CONSTRUCTION FOR NORDSTROM PARK WELL AND DIANA WELL NO. 3**  
**Actions:** *1) Accepted as Complete the Construction of Nordstrom Park Well and Diana Well No. 3 Project in the Final Amount of \$581,300; and 2) Directed the City Clerk to File the Notice of Completion with the County Recorder's Office.*
13. **AWARD OF CONTRACT FOR CONSTRUCTION OF LED TRAFFIC LIGHT CONVERSION PROJECT**  
**Actions:** *1) Appropriated an Additional Amount of \$154,138 for the Replacement of Incandescent Traffic Signal Lights with Light Emitting Diode (LED) Traffic Signal Lights from Our Unappropriated Street Fund Balance, and 2) Awarded Contract to Republic Electric for the Construction of LED Traffic Light Conversion Project in the Amount of \$202, 821.*
14. **REQUEST TO EXTEND THE APPLICATION FILING PERIOD FOR THE RECRUITMENT OF PERSONNEL COMMISSIONERS**  
**Action:** *Authorized Staff to Extend the Application Filing Period for the Recruitment of Personnel Commissioners to June 15, 2001 or Until Filled.*
15. **SPECIAL CITY COUNCIL MEETING MINUTES OF MAY 4, 2001**  
**Action:** *Approved Minutes as Written*
2. **BI-ANNUAL VACANCY RATE SURVEY**

Mayor Pro Tempore Sellers stated that in addition to having a critical shortage of affordable and non affordable apartment and rental units in the community, the City also has a shortage of office space. He felt that there may be cases where individuals may be renting housing units so that they can run office operations. He requested that staff investigate this concern. He noted that the biggest increase in vacancy is in the Village Avante complex and that it was his belief that this was due

primarily to improvements and additions.

Director of Business Assistance and Housing Services Toy informed the City Council that the survey focused on larger apartment complexes. He said that in the larger apartment complexes, the use of units for office space may be an issue. He stated that in small apartments or four plexes staff would not be aware of problems unless an individual contacts staff identifying a problem. Regarding the Village Avante issue, he stated that normally there is some turnover in terms of relocating tenants under a timeline.

**Action:**        *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Established** the Bi-annual Vacancy Rate for April 2001 as Recommended by the Planning Commission.*

**3.        APPROVAL OF ENCROACHMENT PERMIT WITH ALIEN TECHNOLOGIES FOR CONSTRUCTION OF A PRIVATE FIBER OPTIC CABLE**

Mayor Pro Tempore Sellers recused himself from agenda item 3 due to a conflict of interest.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Mayor Pro Tempore Sellers abstaining, **Approved** Encroachment Agreement thereby Allowing Alien Technology to Construct a Private Conduit and Fiber Optic Cable within Public right-of-way Connecting Their Two Buildings in the Morgan Hill Business Ranch.*

Mayor Pro Tempore Sellers resumed his seat on the dais.

**8.        AMICUS REQUEST FROM CITY OF THOUSAND OAKS REGARDING PETITION FOR REVIEW IN AMELCO ELECTRIC V. CITY OF THOUSAND OAKS**

Council Member Chang inquired whether the City of Thousand Oaks paid for the 32 change work orders?

City Attorney Leichter responded that it was her belief that a contract was entered into for \$6.1 million in electrical work with 32 change orders being processed, paid and signed off by the contractor, releasing the City from all liability. The contractor returned requesting an additional \$2.1 million as total cost recovery for work that was done outside the change work order.

Council Member Tate noted that the City is being asked to participate in an Amicus Brief and be a friend of the appealing city because they let out a contract and signed a contract with a firm. The firm performed to the contract that included several changes which are typical to the public works' environment. He noted that there are provisions in a contract on how one would attain changes. At the end of the process, the contractor came back to request an additional \$2.1 million because they did not believe that they had recovered enough of their expenses. When they went to court to request the \$2.1 million, the contractor did not have a way to prove that the actual total expenses were \$2.1 million, yet, the court awarded the additional \$2.1 million. He found the court's ruling incredulous, including the Appeals Court ruling in favor of the contractor. He felt that the city is placed in a position where if the city signs a contract, the contractor can return and request

additional funds above and beyond the original contract and agreed upon negotiated changes. He felt that the City needs to fight this case.

Mayor Pro Tempore Sellers noted that the city requests that individuals submit a reasonable bid and not just bid on a fraction of the cost to get their foot in the door, only to return and charge the city what the city would have given to someone else if they had been awarded the bid.

City Attorney Leichter felt that this is a legal theory that has applicability in other areas where the contract is not sufficient to compensate someone for the work that was performed. The problem is that it has never been applied in a public works setting before, thus the reason this case is so critical.

Mayor Kennedy stated that this is the field that he works in his industry and that it is common for contractors to seek extras. He felt that the city must have had a problem in adequately tracking the changes or in poorly allowing the contractor to do work in order for a court to agree to their case. He agreed that this case does not make sense and that it is incredulous. As much as he supports the need to protect cities from unfair and unjust legal actions, he does not have sufficient information about this particular case to understand how the court could rule in favor of the contractor.

City Attorney Leichter clarified that any contractor can come in and state that there were so many changes in the contract that he could not keep track of them. She felt that it was incumbent upon the contractor to keep track of where they think they have incurred additional expenses and apply for a change order as it is not the obligation of the public agency to do so. She noted that there is a process that needs to be followed in approving change orders by a public agency (amendment to contract). The contractor decided at the end of the project that they had not been compensated and that she did not believe that they were able to prove their damages because they failed to keep an accurate record.

Mayor Kennedy stated that he would support staff's recommended action but requested that staff find out exactly what happened in this situation for the City's edification and for the benefit of Public Works Department/contract individuals.

**Actions:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the City Attorney to Join the League of California Cities in Support of the amicus brief to be filed with the California Supreme Court on behalf of the City of Thousand Oaks in Amelco Electric v. City of Thousand Oaks.*

## **11.      CITY POSITION ON STATE LEGISLATION**

Council Member Carr noted that the City is being asked to oppose SCA3 based on the assumption that gas tax dollars that the state collects be eligible for mass transit projects. He did not believe that this bill would require gas tax monies to be spent any different from the way they are spent today. The proposed bill would open up the flexibility for regional agencies (e.g., MTC) to be able to use the gas tax dollars on different things such as mass transit. One of the key issues he found in reading the bill is that it would allow the use of monies for rolling stocks. He noted that there is a small pot of money coming from the State today for things such as additional trains to run to South County. When it comes to spending funds on rolling stock, it would be the last criteria that the dollars would

be eligible for. He suggested that the City not take a position in opposition to SCA3. If the City does not want to go against the League of California cities in their position, he suggested that the City not take a position on SCA3. He indicated that the VTA has taken a position to support SCA3.

Mayor Pro Tempore Sellers indicated that he and Mayor Kennedy serve on the City's Legislative Committee. In reviewing SCA3, the Legislative Committee expressed concern that there is another opportunity for the State to take away funding from local agencies even further.

Mayor Kennedy stated that one of the problems with the transit funding mechanism is that Measure A funds will go toward mass transit for new facilities and operating costs. This would leave the city short on funding for highways and freeways. He said that South County relies on roadways and that South County residents do not have as much of a direct benefit from Bart as cities to the north would. He stated that he supported the League's position that the City oppose this bill and that the funds be earmarked for vehicle improvisations.

Council Member Carr felt that the difference in this case is that there are no dollars available today provided by the State through any taxing measures to purchase new cars to add to Caltrain to help Morgan Hill residents. The gas tax dollars are used today are strict by State standards versus local/regional standards. He felt that SCA3 would allow flexibility, locally and regionally, shifting funds to street and roads or for the provision of more trains to South County.

Mayor Kennedy suggested that the City not take a position on SCA3, stating that he would like to study this bill further. He recommended that SCA3 be taken back to the Legislative Committee if the timing is appropriate.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Directed** Staff to Prepare a Letter on SB 1069 Stating the City's Legislative Position for the Mayor's Signature.*

## **PUBLIC HEARINGS:**

### **16.    OUT OF AGENCY SERVICE REQUEST, OSR-00-04: BURNETT - KAWAHARA** *(Continued from April 4, 2001) - Resolution No. 5477*

Director of Community Development Bischoff presented the staff report. Mayor Kennedy opened the public hearing. He indicated that he is in receipt of a speaker card from Mr. Kawahara stating that he agrees to the terms and conditions of the OSR request and that he would be willing to answer any questions that the City Council may have. No comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers noted that this was a unique circumstance and that he was glad that the applicant and staff were able to work out the details so that it does not create a situation in the future where others can return and claim that a precedent was set with the approval of this request.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Adopted** Resolution No. 5477, Approving Forwarding the Request to LAFCO.*



**17. DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA 00-04: E. DUNNE - FIRST COMMUNITY HOUSING - Ordinance No. 1509, New Series**

Council Member Chang stepped down from this item due to a conflict of interest.

Director of Community Development Bischoff presented the staff report. Mayor Kennedy opened the public hearing. Jeff Oberdorfer, Executive Director of First Community Housing, stated his concurrence with staff's recommendation and said that he would answer any questions that the Council may have. No further comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Waived** the Reading in Full of Ordinance No. 1509, New Series, Approving the Development Agreement Amendment (DAA).*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1509, New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1500, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT TO INCORPORATE A ONE YEAR EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MP-98-35: EAST DUNNE-FIRST COMMUNITY HOUSING. (APN 817-11-060) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: Chang; ABSENT: None.*

Council Member Chang resumed her seat on the dais.

**18. APPLICATION ZA-01-07: AMENDMENT TO CHAPTER 2.56 OF THE MUNICIPAL CODE TO ALLOW NON-CITY RESIDENTS TO SERVE ON THE ARCHITECTURAL AND SITE REVIEW BOARD (ARB) - Ordinance No. 1510, New Series**

Director of Community Development Bischoff presented the staff report. Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **Waived** the Reading in Full of Ordinance No. 1510, New Series, Approving the Municipal Code Amendments.*

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1510 New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 2.56 OF THE MORGAN HILL MUNICIPAL CODE TO ALLOW OUTSIDE OF CITY RESIDENTS WHO RESIDE WITHIN THE CITY'S SPHERE OF INFLUENCE AREA TO SERVE ON THE ARCHITECTURAL AND SITE REVIEW BOARD by the following roll call vote: AYES: Carr, Chang, Kennedy,*

*Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Mayor Pro Tempore Sellers stated that the success of the ARB will be due to the quality of the individuals on the Board. If the Board does not have qualified individuals in design standards, the entire community will suffer in terms of design standards. He recommended that the City Council take the extra effort to invite the most highly qualified individuals as applicants to the ARB.

**19. APPLICATION AP-01-02: APPEAL OF PLANNING COMMISSION DENIAL OF AN EXTENSION OF TIME FOR A VARIANCE APPROVAL: MONTEREY - OAK GLEN PLAZA**

Mayor Pro Tempore Sellers stepped down from discussion of this item due to a conflict of interest.

Director of Community Development Bischoff presented the staff report. He indicated that the Planning Commission did not grant the extension to an approved variance based, in part, on the testimony received from neighbors. The Planning Commission felt that it made an error in finding that the alleyway behind the commercial center was an exceptional circumstance and that they made an error in the approval of the variance to begin with. Denial of the extension of time to the variance application resulted in the applicants appealing the denial to the City Council this evening. He stated that since the Planning Commission heard this matter, the applicant has become aware of concerns of the adjacent property owners. Specifically, the concern is that the construction of an addition of the size proposed would block views with the exception of a blank wall of the back of a commercial center. As a result, the property owner has modified his plans and that they are bringing them to the City Council under appeal. The modification would be to reduce the size of the addition/expansion from 3,683 square feet to 2,550 square feet. This reduction would result in the adjacent residents not looking out on the expansion. In response to Council Member Tate's question, Mr. Bischoff stated that he was not sure if the Planning Commission was aware of the applicant's willingness to reduce the length of the building as the modification has been a recent occurrence.

Council Member Tate asked if there was any advantage or disadvantage to the design as it relates to the safety issue, specifically the control of the alleyway? Mr. Bischoff responded that the less building you have, the better the visibility down the alleyway. He indicated that the residents have fences that back right up to the alleyway.

Council Member Carr suggested that this application be referred back to the Planning Commission for their review and address safety and trash concerns. He asked if the existing home was a legal and conforming use as it appears to be out of place? He said that he would like to have the Planning Commission to look at the request based on the revisions made to the plans.

Mr. Bischoff stated that the second house has benefit of permits. However, under the current code, the City would not allow two single homes on a lot. He indicated that this property was previously zoned multi-family, R-2-3,500 and that there is sufficient land area to allow two units. At time of zoning, two single family homes were allowed on a single lot.

Mayor Kennedy opened the public hearing.

Joe Picazo, owner of the adjacent residence, referred to a letter he sent to Council Members dated May 9, 2001. He addressed the four concerns contained in the letter and requested that the City Council support the recommendation of the Planning Commission at their meeting of April 10, 2001 to deny the variance as the setbacks were set some time ago. He stated that he would be staring at a blank wall if the applicant is allowed to expand.

Mayor Kennedy asked if the plans were reduced in a manner that does not directly obscure the front of Mr. Picazo's home, would it make a difference? Mr. Picazo stated that his concern is that of safety. He indicated that there was a fire in the alleyway approximately three weeks ago and that a fire truck had difficulty accessing the alleyway to put out the fire. Also, the code requires a 20-foot setback from the alleyway and indicated that the setback is only five feet as drawn.

Raj Khanna read from a prepared statement as it relates to this agenda item. He informed the City Council that he did not receive documentation of the February 2000 Planning Commission approval until November 2000. He indicated that he would be willing to reduce his plans in order to build a 2,550 square foot addition instead of the original 4,000 square foot addition proposed earlier. This reduction would allow enough space to be opened toward Wright Avenue to alleviate concerns of the adjacent resident's view. He requested that the extension of time be granted because he was not given a fair amount of time as the Planning Commission Resolution was delivered to him almost 10 months after approval. Therefore, he was not aware that the variance had an expiration date. He felt that the additional construction along the straight line extension of the existing building would present a uniform and beautiful look at the area and would minimize opportunities for illegal activities, including parking, graffiti, etc. The alleyway between his property and the residential lots creates a unique situation for allowing the variance. He requested that the extension of time for his project be granted.

Mayor Kennedy asked if the alleyway was really needed and what would happen if the alleyway was eliminated? Mr. Khanna felt that this is a unique situation based on the existing alleyway and that he did not understand the purpose of the alleyway.

Mr. Sing, project civil engineer, indicated that the alleyway is being used as an important service road, giving access to the rear side of the commercial building and access to the residential lot. He stated that the alleyway also serves as an emergency service lane. He informed the City Council that the alleyway cannot be eliminated because it is used by the commercial property and that garbage is collected via the alleyway. He stated that he would answer any questions relating to the development plan.

Mayor Kennedy asked if there is a city requirement for the alleyway? Mr. Bischoff responded that there are a number of locations within the city where alleyways exist and that oftentimes, alleyways provide access for service and garages. He stated that staff would need to research whether the alleyway could be abandoned. He said that the adjacent property owners could claim that they have legal access to the alleyway to the extent that they need it for access to garages or other areas. He can research the issue to see if it is possible to abandon the alleyway. He felt that this alleyway may provide some access to the back of Joy's Utopia.

Mr. Picazo presented the City Council with photographs of the alleyway. He noted that two trash bins are located in the alleyway.

Council Member Chang inquired about the late notification. Mr. Bischoff stated that it is a standard procedure for the Planning Division to mail out the staff reports and resolutions for any and all items to applicants in advance of the hearing/meetings. He noted that the applicant has made reference to a letter being sent to him in November requesting that he sign the resolution. He inquired with the applicant if she had received the variance staff report and resolution in advance of the hearing. The applicant advised him that she was out of the country but that it was her belief that the staff report was not sent to her in advance of the meeting. He stated that he would have to investigate whether this was the case. However, he felt that this would be an extreme occurrence if indeed this happened.

No further comments being offered, the public hearing was closed.

Council Member Tate stated that he knows that the Planning Commission tries to find a mutually agreeable solution on situations similar to this one. Yet, as he reads the minutes from the Planning Commission report, it contains a short summary that states that the reasons for denial of the extension are perceived shortage of trash receptacles and the lack of elevation differences. He did not believe that there was enough information contained in the minutes for him to understand what the Planning Commission went through and why they denied the extension request instead of attempting to get the parties together. Had the Planning Commission gotten the parties together, they would have found a mutually agreeable solution. He supported sending the variance back to the Planning Commission. If the application needs to return to the City Council at a later date, he would like to receive more details in the report from the Planning Commission.

Council Member Chang concurred with the comments and recommendation as expressed by Council Member Tate.

Mayor Kennedy supported the recommendation to refer the variance application back to the Planning Commission so that they can review the new information submitted. The Planning Commission can also look at the issue of safety access and other issues that have been raised.

**Action:**        *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** the appeal application and referred the variance application to the Planning Commission in light of the changes that have been made with the direction that they take a look at the issues of safety, access and trash/receptacles.*

Council Member Tate requested that Police Department staff provide input on the safety issue should the appeal return to the City Council as there seems to be varying view points on this issue.

**20.    ORDINANCE REGARDING SIDEWALK ENCROACHMENTS - Ordinance No. 1507, New Series**

Chief of Police Schwab presented the staff report. Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers felt that the ordinance is needed, noting that a problem in the downtown exists, particularly at the corner of Second and Monterey, in front of the Coffee Roasting Club which

has been experiencing serious problems. He noted that there has been a rise in criminal and other activities that is deleterious to the health of the downtown. He recommended that the city start thinking about a longer term approach as the City needs to do what it can to keep the youth from hanging out in the downtown area in the late hours. He said that the community center will be built within 12-18 months. He requested that recreation staff members consider the very unique location and plan for opportunities of the youth of the community. If you do not plan for youth activities, the city may be creating problems with the new community center. He felt that the ordinance would require businesses who obtain a street encroachment to maintain the furniture in a manner that preserves public health and safety. He wanted to make sure that as businesses apply for an encroachment permit, they understand that this is not only an opportunity but a responsibility for maintaining the areas to make sure that the downtown stays healthy.

Council Member Chang inquired whether the 11:00 p.m. curfew is being enforced? Chief of Police Schwab responded that the curfew remains at 11:00 p.m. but that it needs to be understood that the curfew only applies to youth under the age of 18 who are not lawfully conducting business.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No.1507, New Series, Repealing the Existing Chapter 12.04 of the Municipal Code regarding Sidewalk Use and Add a New Chapter 12.04 of the Municipal Code Regarding Sidewalk Encroachments.*

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1507, New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPEALING CHAPTER 12.04 (SIDEWALK USE) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING SIDEWALK USE AND ADDING CHAPTER 12.04 (SIDEWALK ENCROACHMENT) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

## **21.    ORDINANCE REGARDING LOITERING - Ordinance No. 1508, New Series**

Council Member Chang excused herself from the dias.

Chief of Police Schwab presented the staff report. Mayor Kennedy opened the public hearing. No input being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council on a 4-0 vote (Council Member Chang absent) **Waived** the Reading in Full of Ordinance No. 1508, New Series, Repealing the Existing Chapter 9.10 of the Municipal Code regarding Loitering and Add a New Chapter 9.10 of the Municipal Code Regarding Loitering.*

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1508, New Series, by Title Only as*

*follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPEALING CHAPTER 9.10 (LOITERING) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL AND ENACTING CHAPTER 9.10 (LOITERING) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PROHIBITIONS AGAINST LOITERING by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

## **OTHER BUSINESS:**

### **22. AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY INC. TO CO-SPONSOR THE JULY FOURTH CELEBRATIONS**

Chief of Police Schwab presented the staff report and recommenced Council consideration of the agreement.

Mayor Kennedy opened the floor to public comment.

Bruce Tichinin, President of IDI, indicated that the City has been sponsoring the Fourth of July celebration in recent years. He indicted that Vice-president/Fundraising Chair, Rich Gamboa; and the 5K run/walk Chairman, Council Member Tate, were in attendance to answer questions. He stated that he has signed the contract on behalf of IDI and requested that the Mayor be authorized to sign the contract on behalf of City.

Council Member Chang resumed her seat on the dias.

Mayor Pro Tempore Sellers stated that for many years, the fireworks displays were held at the Britton Middle School area and the surrounding neighborhood. He inquired whether a map could be produced that would give individuals an indication of the best place to park to view the fireworks and how traffic might flow best. He also inquired as to the view shed of the fireworks display. He felt that if the view shed was such that neighborhoods could watch the fireworks from their neighborhood, it may cut down on some of the car traffic in the neighborhood.

Mr. Tichinin stated that he would look into Mayor Pro Tempore Sellers' suggestion.

Mayor Kennedy thanked IDI and all the volunteers for their efforts and that he was pleased to see that the fireworks will be displayed in Morgan Hill.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Authorized** the City Manager to Sign the Agreement to Co-sponsor the July Fourth Celebrations and Support Independence Day, Inc. by Contributing Funding and In-kind Services Not to Exceed \$14,100.*

### **23) PROPOSED 2001/02 BUDGET**

Finance Director Dilles presented the staff report on the proposed 2001/02 budget. He

recommended that the City Council set the budget and Capital Improvement Programs (CIP) workshops and set June 20 as the public hearing for the adoption of the budget.

Director of Public Works Ashcraft addressed the CIP portion of the budget.

Council Member Tate stated that it was his understanding that the City Council is being asked to fund 14 additional positions. He felt that the City is currently doing a good job with even fewer employees, noting that several vacant positions have not been filled. He wanted to make sure that the City is not bringing in more employees than the City needs in an economy that is fairly uncertain. He requested that comparisons be provided in terms of how these 14 additional positions would be staffed and put the average head count in the next fiscal year as compared to what it is this fiscal year. He wanted to associate specific projects with the additional head counts.

Mayor Kennedy stated that having gone through terrible problems prior to 1992 and having to lay off 30% of City staff, he felt that the City needs to be very prudent and cautious in the positions to be added. Yet, he is mindful of the tremendous amount of work that the City has before it and that staff is heavily burdened with the work load, working hard to keep up with all projects that the City has going. However, he agreed with Council Member Tate that many businesses are freezing or laying off individuals in the private sector and that many public sector companies are implementing a hiring freeze in the anticipation that the state would be coming back to raid local government budgets. He felt that the City needs to be cautious in how it approaches the budget.

Council Member Chang thanked staff for completing the staff recommended budget in a timely manner.

Council Member Carr stated that the legislative office came out with their analysis of the Governor's May Revise. He asked if there are to be changes expected in the City's budget based on the May Revise of the State's budget?

City Manager Tewes responded that he did not anticipate any changes to the City's budget based on the Governor's May Revise. He stated that the Governor included \$250 million dollars in his budget to be allocated to cities and counties in a manner yet to be determined. Staff did not include this in the City's revenue estimates. He stated that the Governor's failure to fund cities and counties based on the May Revise will not directly impact the City's budget. He indicated that the legislature now gets the opportunity to review the Governor's budget and that there are many who are concerned that other existing programs may yet be in jeopardy as the State tries to fund its state responsibilities for education, transportation, health, etc., including such things as the reimbursement to cities and counties for the lost revenue. He stated that this is subject to statutory action by the legislature and could be changed any year. He stated that the good news is that the Governor is not proposing to change the reimbursement of motor vehicle license fees. However, the bad news is that the State's budget is uncertain and the legislature will have to balance the budget. Staff will be mindful of all of these changes and will be monitoring the State's budget closer than in the past.

Mayor Kennedy stated that he has a conflict with both of the established budget workshop dates of June 8 and June 15, 2001. He asked if the June 8 workshop can be conducted in the afternoon versus the morning?

The City Council indicated that an afternoon workshop on June 8 could be accommodated. It was recommended that City Clerk staff contact City Council members to identify a mutually agreeable CIP workshop date.

**Actions:**      *By consensus, the City Council: 1) **Reviewed** the City Manager's Proposed 2001/02 Budget & Capital Improvement Program (CIP); 2) **Set** June 8, 2001, 1-5 p.m. as a Budget workshop. Staff to contact Council Members to find a mutually agreeable meeting time/date for the CIP Workshop; and 3) **Set** June 20, 2001 as a Public Hearing for Adoption of the 2001/02 Budget.*

## **SECOND READING OF ORDINANCE:**

**Action:**      *On a motion by Council Member Chang and seconded by Council Member Tate, the City Council **Adopted** Ordinance No. 1506, New Series, as follows:*

24.      **ADOPT ORDINANCE NO. 1506, NEW SERIES**  
*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1440, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-98-09: NINA LANE - DOAN TO ALLOW FOR A 90-DAY EXTENSION OF TIME (APN 817-60-021), as amended, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

## ***City Council & Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**      *On a motion by Mayor Pro Tempore/Agency Member Sellers and seconded by Council/Agency Member Carr, the City Council unanimously (5-0) **approved** Consent Calendar Items 25 and 26 as follows:*

25.      **JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 25, 2001**

**Action:** **Approved** Minutes as Written

26.      **JOINT REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MAY 2, 2001**

**Action:** **Approved** Minutes as Written

### **CLOSED SESSION:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items. She indicated that she would not be participating in Closed Session Item 4 due to a conflict of interest.

#### **1.**

##### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Initiation of litigation pursuant to Government Code section 54956.9(c) (one case)



**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION**

Legal Authority: Government Code 54956.8 & 54956.9(c) (1 potential case)  
Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the  
southwesterly side of Cochrane Road (St. Louise Hospital  
property)  
City Negotiators: Agency Members; Executive Director; Agency Counsel; and  
F. Gale Conner, special counsel  
Closed Session Topic: Potential Litigation

**3.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION**

Legal Authority: Government Code 54956.8  
Property: APN 817-13-001; 37.8 acres (soccer complex)  
Negotiating Parties:  
For City: City Manager, City Attorney, Public Works Director  
For Property Owners: Tadashi & Alice A. Kadonaga, Trustee  
Under Negotiation: Price and Terms of Payment

**4.**

**CONFERENCE WITH LABOR NEGOTIATOR**

Authority: Government Code Section 54957.6  
Agency Negotiators: Ed Tewes, City Manager; Melissa Stevenson Dile, Assistant  
to City Manager; Helene L. Leichter, City Attorney  
Employee Organization: AFSCME Local 101,  
Morgan Hill Community Service Officers Association,  
Morgan Hill Police Officers Association, and  
Unrepresented Management Employees:  
Chief of Police  
Director of Business Assistance & Housing Services  
Director of Community Development  
Director of Finance  
Director of Public Works/City Engineer  
Human Resources Director  
Assistant to the City Manager  
Council Services and Records Manager  
  
Middle Management - Group 1-B  
Police Captain  
Deputy Director of Public Works  
Deputy City Attorney  
Deputy Director of Finance  
Chief Building Official  
Human Resources Supervisor  
Planning Manager  
Recreation Manager  
Senior Civil Engineer  
Budget Manager  
Business Assistance and Housing Services Manager  
Police Support Services Supervisor  
Senior Planner  
Utility Systems Manager  
Recreation Supervisor  
Secretary to the City Manager

**PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the above listed closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION:**

Mayor/Chairman Kennedy adjourned the meeting to closed session at 9:33 p.m.

**RECONVENE:**

Mayor/Chairman Kennedy reconvened the meeting at 11:08 p.m.

**CLOSED SESSION ANNOUNCEMENT:**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken on the above listed closed session items.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS:**

No items were noted.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:09 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**Irma Torrez, City Clerk/Agency Secretary**